

INTER-MUNICIPAL AGREEMENT

This Inter-Municipal Agreement (the “Agreement”) made this _____ day of _____, 2018 by and between the City of Niagara Falls, a Municipal Corporation having offices at 745 Main Street, Niagara Falls, NY, 14302 (“CNF”) and the City of North Tonawanda, NY, a Municipal Corporation having offices located at 216 Payne Avenue, North Tonawanda, NY 14120 (“CNT”) and the Town of Wheatfield, a Town located in the Town of Wheatfield, NY with offices located at 2800 Church Road, Wheatfield, NY 14120 (“Town”).

WHEREAS, the New York State Department of Transportation has made available the sum of \$100,000,000.00 in funding through the Transportation Alternatives Program (TAP) and the Congestion Mitigation and Air Quality Improvement Program (CMAQ) or “TAP” in support of innovative, transformative transportation improvements for New York State communities, including bicycle, pedestrian, multi-use paths and/or projects that will help meet the requirements of the Clean Air Act by reducing congestion and vehicle emissions; and

WHEREAS, CNF, CNT and the Town are collaborating together with the Niagara River Greenway Commission on a project known as the **“Niagara River Greenway Connecting Trails Project”** (the “Project”), which is a series of connecting bicycle and pedestrian multi-use trails through each respective municipality, that will satisfy the transportation goals of the TAP Program, the priority objective of the region’s Niagara River Greenway Plan, as well as, the quality-of-life and waterfront development goals for each municipality; and

WHEREAS, upon Project completion, each respective municipality will be responsible for maintaining that portion of the Project that is located within the geographic bounds of each respective municipality; and

WHEREAS, the total Project cost is \$4,774,713.00 of which 80% is being applied for pursuant to the TAP Program; and

WHEREAS, while each respective municipality is an acceptable Project applicant and sponsor as determined by the New York State Department of Transportation, the CNF will act as Niagara River Greenway Connecting Trails Project sponsor and be responsible for Project implementation on behalf of CNF, CNT and the Town; and

WHEREAS, the required 20% local match amount of approximately \$980,000.00 will be paid by The Ralph C. Wilson Jr. Foundation, a charitable foundation that seeks to invest in building stronger more sustainable communities, The Niagara River Greenway Commission and/or Niagara County Greenway Host Committee, or other donor; and

WHEREAS, CNT and the Town agree that CNF is best suited to manage and undertake the Project on behalf of the three municipal entities that are parties to this Agreement; and

WHEREAS, attached hereto are surveys of the Project that depict the portions of the Project passing through each respective municipality; and

WHEREAS, the Town presently has in place an assignable Federal grant, the balance of which shall be assigned, to the CNF, to undertake work on that portion of the Project that passes through the Town; and

WHEREAS, the Town will assign that Federal grant, and other similarly applicable funds, to CNF to enable CNF to manage and oversee construction of that portion of the Project that passes through the Town; and

WHEREAS, it is anticipated that work on the Project will commence in March of 2019 and will be concluded in July of 2021.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Term. The term of this Agreement shall commence upon the execution of this Agreement by all parties and shall end in July of 2021 or whenever the Project is completed, whichever is later.
2. Funding. CNF, CNT and the Town each agree that each will diligently apply for or assist with any application for funding pursuant to the TAP program and that any such funds obtained will be utilized for the planning, design and construction phases of the Project as it is located within the geographic bounds of each respective municipality and that any

such funds obtained by each respective municipality will be assigned to CNF for the purpose described herein.

3. Cost Overruns. Any change orders or other increases to the estimated cost of the Project of \$4,774,713.00 must first be agreed to by all parties to this Agreement.

In the event the total Project cost exceeds the estimated cost of \$4,774,713.00, each party to this Agreement agrees to be responsible for that portion of the cost overrun that is equal to the portion of the Project that passes through the corporate bounds of each respective municipality as it relates to the entire Project. To illustrate, if the cost overrun is \$10,000.00 and 25% of the Project passes through CNT and 25% of the Project passes through the Town, and 50% of the Project passes through CNF, the CNT's portion of the cost overrun is \$2,500.00, the Town's portion of the cost overrun is \$2,500.00 and the CNF's portion of the cost overrun is \$5,000.00.

4. Project Responsibility. CNF agrees to be solely responsible for the planning, design and construction of the Project in total, including those portions of the Project that are located within the municipal bounds of CNT and the Town and will utilize all TAP funds and grants obtained by CNF, CNT and the Town and assigned to CNF for this purpose inclusive of any grant from the Niagara River Greenway Commission and/or Local Greenway Host Committees, the Ralph C. Wilson Jr. Foundation, or other donor.

5. Easements. During all phases of the Project, including planning, design and construction, CNT and the Town each grant to CNF and its agents and contractors and consultants,

easements to go onto each municipality's property in the vicinity of the Project as shown on the attached survey in order to facilitate the construction of the Project. CNF agrees that any areas adjacent to the Project, which may be disturbed during the construction phase of the Project, will be restored to its original condition, reasonable wear and tear accepted.

6. Local Match. Each party to this Agreement acknowledges and agrees to be responsible for obtaining any respective local matches that are required pursuant to the TAP Program or any other source of funding necessary to complete the Project in a timely fashion.
7. Indemnification. To the extent permitted by law, each party hereto shall indemnify, defend and hold harmless the other party, and their respective officers, directors, shareholders, employees, agents and representatives from and against any and all claims, liabilities, damages, injuries and expenses (including reasonable attorney's fees and court costs), of any nature whatsoever arising out of or incidental to the indemnifying parties acts or omissions, or those of its employees, agents, representatives and contractors, in connection with this Agreement except that any such indemnified party shall not be indemnified for losses resulting from its own fraud, sole negligence or willful misconduct.

CNF agrees to require any of its contractors performing work under this Agreement to comply with the insurance requirements attached hereto.

The City of Niagara Falls is self-insured and will provide CNT and the Town with a statement of self-insurance prior to commencing any work on the Project.

8. Assignment or Subletting. No party to this Agreement shall assign this Agreement or sublet any part of this Agreement without the express written approval of all parties to this Agreement.
9. Inspections. Each party to this Agreement may review or inspect any and all documents and records pertaining to the Project maintained by CNF upon reasonable notice to CNF and may conduct periodic inspections of the Project as it progresses.
10. Timing of Construction. The parties agree that the construction of the Project is anticipated to commence in March of 2019 and conclude at some point in July of 2021. It is understood and agreed that these are target dates and may change from time to time depending upon weather conditions and various other factors that may adversely impact construction.
11. Contingencies. The parties to this Agreement agree that the commencement of the Project is contingent upon:

- a. Funding becoming available to each respective Municipality pursuant to the TAP/CMAQ Program, and/or other grant-source, and that any and each local match being available to each respective Municipality.

- b. A contribution of \$980,000.00 to the Project, and/or the CNF as Project sponsor, representing the required local matching funds.
 - c. The approval of the City Council of the CNF, the Common Council of the CNT and the Town Board of the Town by TAP/CMAQ Grant Application Deadline of August 16, 2018.
 - d. In the event that any of the contingencies described herein are not satisfied sufficiently within 90 days from the date the State of New York announces the next round award of TAP/CMAQ grant funding, then this Agreement will be null and void and of no force or effect.

12. Notices. Any notice permitted or required to be given by the terms of this Agreement shall be in writing and shall be deemed sufficiently given if hand delivered, sent by nationally recognized overnight courier service (such as Federal Express, UPS Overnight, etc.), or sent by certified mail, return receipt requested, as follows:

To CNF: City of Niagara Falls
745 Main Street
Niagara Falls, NY 14302
Attn: Office of Mayor
Paul A. Dyster

With Copy to: City of Niagara Falls
745 Main Street

Niagara Falls, NY 14302

Attn: Office of Planning and Economic Development

Thomas J. DeSantis, AICP

To Town: Town of Wheatfield
2800 Church Road
Wheatfield, NY 14120
Attn: Office of Town Supervisor

Notices given pursuant to this section shall be deemed to have been received:

- a. If personally delivered, upon delivery;
 - b. If sent by certified mail, three (3) days after the notice was mailed; or
 - c. If sent by nationally recognized overnight courier service, one day after sending.

Either party, by written notice given in accordance with this section, designate a different address or addresses to which such notices shall be sent.

13. Successors and Assigns. The terms, covenants, conditions and agreements set forth herein shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of the parties (to the extent assignment is permitted hereunder).

14. Authority. Each person executing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the party for which he or she is signing, and that his or her signature binds such party to the terms and provisions of this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

16. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York without reference to principles of conflicts of law.

17. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Date: _____, 2018

THE CITY OF NIAGARA FALLS

By: _____

Attest:

Date: _____, 2018

THE CITY OF NORTH TONAWANDA

By: _____

Date: _____, 2018

THE TOWN OF WHEATFIELD

By: _____